

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 20

Introduced by Senator Padilla

December 6, 2010

An act to amend Section 114094 of the Health and Safety Code, relating to food facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 20, as amended, Padilla. Food facilities: menu labeling.

Existing law, the California Retail Food Code, requires, on and after January 1, 2011, each food facility in the state that *operates under common ownership or control with at least 19 other food facilities with the same name in the state and that offers for sale substantially the same menu items or that* meets other specified criteria to disclose calorie content information per standard menu item, as specified. The State Department of Public Health administers and local enforcement agencies enforce this code. Existing law provides that, on and after July 1, 2009, a food facility that violates these provisions is guilty of an infraction.

Existing law, the ~~federal~~ Federal Food, Drug, and Cosmetic Act, requires certain restaurants and similar retail food establishments *that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items* to disclose nutrient content information, as specified, and provides that certain state and local nutrient content information requirements that are not identical to the federal law are preempted.

This bill would ~~declare the intent of the Legislature to enact legislation that would conform state menu labeling requirements to federal requirements~~ provide that the calorie content disclosure requirements of the California Retail Food Code are instead applicable to certain

food facilities that are part of a chain with at least 20 locations doing business under the same name and offering for sale substantially the same menu items.

By revising the definition of a crime and changing the duties of local officials, this bill would impose a state mandated-local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) In 2008, the Legislature enacted Section 114094 of the
4 Health and Safety Code to provide consumers within California
5 with better access to nutritional information about prepared foods
6 sold at food facilities with at least 20 locations with the same name
7 in the state so that consumers can understand the nutritional value
8 of available foods.

9 (b) On March 23, 2010, the federal Patient Protection and
10 Affordable Care Act was enacted to, among other things, provide
11 consumers in all states with access to nutritional information about
12 the prepared foods sold at restaurants or similar retail food
13 establishments that are part of a chain with 20 or more locations
14 doing business under the same name.

15 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~
16 ~~that would conform state menu labeling requirements with federal~~
17 ~~menu labeling requirements.~~

18 SEC. 2. Section 114094 of the Health and Safety Code is
19 amended to read:

1 114094. (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) “Food facility” means a food facility ~~in the state that operates~~
4 ~~under common ownership or control with at least 19 other food~~
5 ~~facilities with which is part of a chain with at least 20 locations~~
6 ~~doing business under the same name in the state, regardless of the~~
7 ~~type of ownership of the locations, and that offer offers for sale~~
8 ~~substantially the same menu items, or operates as a franchised~~
9 ~~outlet of a parent company with at least 19 other franchised outlets~~
10 ~~with the same name in the state that offer for sale substantially the~~
11 ~~same menu items, except that a “food facility” does not include~~
12 ~~the following:~~

13 (A) Certified farmer’s markets.

14 (B) Commissaries.

15 (C) Grocery stores, except for separately owned food facilities
16 to which this section otherwise applies that are located in the
17 grocery store. For purposes of this paragraph, “grocery store”
18 means a store primarily engaged in the retail sale of canned food,
19 dry goods, fresh fruits and vegetables, and fresh meats, fish, and
20 poultry. “Grocery store” includes convenience stores.

21 (D) Licensed health care facilities.

22 (E) Mobile support units.

23 (F) Public and private school cafeterias.

24 (G) Restricted food service facilities.

25 (H) Retail stores in which a majority of sales are from a
26 pharmacy, as defined in Section 4037 of the Business and
27 Professions Code.

28 (I) Vending machines.

29 (2) “Calorie content information” means the total number of
30 calories per standard menu item, as that item is usually prepared
31 and offered for sale.

32 (3) “Drive-through” means an area where a customer may
33 provide an order for and receive standard menu items while
34 occupying a motor vehicle.

35 (4) “Menu board” means a posted list or pictorial display of
36 food or beverage items offered for sale by a food facility.

37 (5) “Nutritional information” includes, but is not limited to, all
38 of the following, per standard menu item, as that item is usually
39 prepared and offered for sale:

40 (A) Total number of calories.

1 (B) Total number of grams of carbohydrates.

2 (C) Total number of grams of saturated fat.

3 (D) Total number of milligrams of sodium.

4 (6) “Point of sale” means the location where a customer makes
5 an order.

6 (7) “Standard menu item” means a food or beverage item offered
7 for sale by a food facility through a menu, menu board, or display
8 tag at least 180 days per calendar year, except that “standard menu
9 item” does not include any of the following:

10 (A) A food item that is customized on a case-by-case basis in
11 response to an unsolicited customer request.

12 (B) An alcoholic beverage, the labeling of which is not regulated
13 by the federal Food and Drug Administration.

14 (C) A packaged food otherwise subject to the nutrition labeling
15 requirements of the federal Nutrition Labeling and Education Act
16 of 1990.

17 (D) A food item when served at a consumer self-service salad
18 bar.

19 (E) A food or beverage item when served at a consumer
20 self-service buffet.

21 (8) “Reasonable basis” means any reasonable means recognized
22 by the federal Food and Drug Administration of determining
23 nutritional information, as well as calorie content information, for
24 a standard menu item, as usually prepared and offered for sale,
25 including, but not limited to, nutrient databases and laboratory
26 analyses.

27 (9) “Appetizer” means a food item that is generally served prior
28 to a food item that is generally regarded as the primary food item
29 in a meal. An “appetizer” includes a first course, starter, or small
30 plate.

31 (10) “Dessert” means a food item that is generally served after
32 a food item that is generally regarded as the primary food item in
33 a meal. “Dessert” includes, but is not limited to, cakes, pastries,
34 pies, ice cream and food items that contain ice cream, confections,
35 and other sweets.

36 (b) (1) Commencing July 1, 2009, to December 31, 2010,
37 inclusive, every food facility shall either disclose nutritional
38 information as required by paragraph (2), or comply with
39 subdivision (c) during this period of time.

1 (2) (A) In order to comply with paragraph (1), a food facility
2 that does not provide sit-down service shall disclose the
3 information in a clear and conspicuous manner on a brochure that
4 is made available at the point of sale prior to or during the
5 placement of an order. A food facility that provides sit-down
6 service shall provide the nutritional information in a clear and
7 conspicuous size and typeface on at least one of the following:

- 8 (i) A brochure available on the table.
- 9 (ii) A menu next to each standard menu item.
- 10 (iii) A menu, under an index section that is separate from the
11 listing of standard menu items.
- 12 (iv) A menu insert.
- 13 (v) A table tent on the table.

14 (B) Notwithstanding subparagraph (A), a food facility that has
15 a drive-through area and uses a menu board to display or list
16 standard menu items at the point of sale shall, for purposes of the
17 drive-through area only, disclose the nutritional information in a
18 clear and conspicuous manner on a brochure that is available upon
19 request, and shall conspicuously display a notice at the point of
20 sale that reads: “NUTRITION INFORMATION IS AVAILABLE
21 UPON REQUEST” or other similar statement that indicates the
22 disclosure of nutrition information is available upon request.

23 (c) (1) On and after January 1, 2011, every food facility that
24 provides a menu shall disclose calorie content information for a
25 standard menu item next to the item on the menu in a size and
26 typeface that is clear and conspicuous.

27 (2) On and after January 1, 2011, every food facility that uses
28 an indoor menu board shall disclose calorie content information
29 for a standard menu item next to the item on the menu board in a
30 size and typeface that is clear and conspicuous.

31 (3) On and after January 1, 2011, every food facility that uses
32 a display tag as an alternative to a menu or menu board to describe
33 a standard menu item that is displayed for sale in a display case
34 within the food facility shall disclose calorie content information
35 for that standard menu item on the display tag for that item in a
36 size and typeface that is clear and conspicuous.

37 (4) On and after January 1, 2011, every food facility that has a
38 drive-through area and uses a menu board to display or list standard
39 menu items at the point of sale shall, for purposes of the
40 drive-through area only, disclose the nutritional information for

1 each standard menu item in a clear and conspicuous manner on a
2 brochure that is available upon request, and shall clearly and
3 conspicuously display a notice at the point of sale that reads:
4 “NUTRITION INFORMATION IS AVAILABLE UPON
5 REQUEST” or other similar statement that indicates the disclosure
6 of nutrition information upon request. If a food facility subject to
7 this paragraph discloses nutritional information in the manner
8 described in subparagraph (B) of paragraph (2) of subdivision (b),
9 the food facility shall be deemed to be in compliance with this
10 paragraph.

11 (d) For purposes of subdivision (c), the disclosure of calorie
12 content information on a menu or menu board next to a standard
13 menu item that is a combination of at least two standard menu
14 items on the menu or menu board, shall, based upon all possible
15 combinations for that standard menu item, include both the
16 minimum amount of calories for the calorie count information and
17 the maximum amount of calories for the calorie count information.
18 If there is only one possible total amount of calories, then this total
19 shall be disclosed.

20 (e) For purposes of subdivision (c), the disclosure of calorie
21 content information on a menu or menu board next to a standard
22 menu item that is not an appetizer or dessert, but is intended to
23 serve more than one individual, shall include both of the following:

24 (1) The number of individuals intended to be served by the
25 standard menu item.

26 (2) The calorie content information per individual serving. If
27 the standard menu item is a combination of at least two standard
28 menu items, this disclosure shall, based upon all possible
29 combinations for that standard menu item, include both the
30 minimum amount of calories for the calorie count information and
31 the maximum amount of calories. If there is only one possible total
32 amount of calories, then this total shall be disclosed.

33 (f) The nutritional information and calorie content information
34 required by this section shall be determined on a reasonable basis.
35 A reasonable basis determination of nutritional information and
36 calorie content information shall be required only once per standard
37 menu item, provided that portion size is reasonably consistent and
38 the food facility follows a standardized recipe and trains to a
39 consistent method of preparation.

1 (g) (1) Every brochure provided pursuant to this section shall
2 include the statement: “Recommended limits for a 2,000 calorie
3 daily diet are 20 grams of saturated fat and 2,300 milligrams of
4 sodium.”

5 (2) Menus and menu boards may include a disclaimer that
6 indicates that there may be variations in nutritional content across
7 servings, based on variations in overall size and quantities of
8 ingredients, and based on special ordering.

9 (h) This section shall not be construed to create or enhance any
10 claim, right of action, or civil liability that did not previously exist
11 under state law or limit any claim, right of action, or civil liability
12 that otherwise exists under state law. The only enforcement
13 mechanism of the section is the local enforcement agency.

14 (i) This section shall not be construed to preclude any food
15 facility from voluntarily providing nutritional information in
16 addition to the requirements of this section.

17 (j) To the extent consistent with federal law, this section, as
18 well as any other state law that regulates the disclosure of
19 nutritional information, is a matter of statewide concern and
20 occupies the whole field of regulation regarding the disclosure of
21 nutritional information by a food facility. No ordinance or
22 regulation of a local government shall regulate the dissemination
23 of nutritional information by a food facility. Any ordinance or
24 regulation that violates this prohibition is void and shall have no
25 force or effect.

26 (k) Commencing July 1, 2009, a food facility that violates this
27 section is guilty of an infraction, punishable by a fine of not less
28 than fifty dollars (\$50) or more than five hundred dollars (\$500),
29 which may be assessed by a local enforcement agency. However,
30 a food facility may not be found to violate this section more than
31 once during an inspection visit. Notwithstanding Section 114395,
32 a violation of this section is not a misdemeanor.

33 (l) If any provision of this section, or the application thereof, is
34 for any reason held invalid, ineffective, or unconstitutional by a
35 court of competent jurisdiction, the remainder of this section, shall
36 not be affected thereby, and to this end, the provisions of this
37 section are severable.

38 *SEC. 3. No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution for certain*
40 *costs that may be incurred by a local agency or school district*

1 *because, in that regard, this act creates a new crime or infraction,*
2 *eliminates a crime or infraction, or changes the penalty for a crime*
3 *or infraction, within the meaning of Section 17556 of the*
4 *Government Code, or changes the definition of a crime within the*
5 *meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 *However, if the Commission on State Mandates determines that*
8 *this act contains other costs mandated by the state, reimbursement*
9 *to local agencies and school districts for those costs shall be made*
10 *pursuant to Part 7 (commencing with Section 17500) of Division*
11 *4 of Title 2 of the Government Code.*